

**TERMINAL DISCLAIMER TO OBVIATE DOUBLE
PATENTING REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

TWI-13120

In re Application of : Lanhua Wei

Application No.: 10/811,018

Filed: March 26, 2004

Confirmation No.: 9574

For: SMALL SPOT ELLIPSOMETER

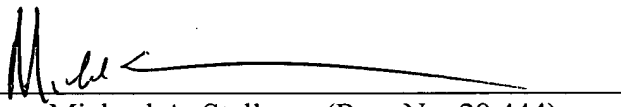
Petitioner, THERMA-WAVE, INC., is the owner of 100 percent interest in the instant application as well as U.S. Patent No. 6,738,138, as evidenced by an assignment executed on February 23, 2001, and recorded on April 16, 2001, Reel 11711, Frame(s) 841. Petitioner hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,738,138. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

The undersigned is attorney of record.

Date: November 2, 2004


Michael A. Stallman (Reg. No. 29,444)

☒ Terminal disclaimer fee under 37 CFR 1.20(d) included.

☒ PTO suggested wording for terminal disclaimer was

☐ unchanged,

☒ changed to include specific information about the recordal of the assignment